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In re Application of
Kanji Takada
Serial No.: 09/787,612
Filed: March 20, 2001
Attorney Docket No.: AKA-269

: PETITION DECISION

This is in response to the petition under 37 CFR 1.181, filed July 22, 2004, requesting rejoinder of claims for purposes of appeal.

BACKGROUND

A review of the file history shows that this application was filed under 35 U.S.C. 371 on March 20, 2001, and, as amended, contained claims 10-14 to a device. In a first Office action, mailed March 12, 2002, the examiner rejected claims 10-14 for various reasons. Applicant replied on July 12, 2002, amending claims 10-14 and adding claims 15-19 to a device and claims 20-26 to a process. The examiner in a Final Office action mailed October 18, 2002, held claims 20-26 as non-elected by original prosecution, but indicated rejoinder under certain conditions if the device claims were found allowable. The examiner continued to reject claims 10-19 for various reasons

Applicant replied on January 21, 2003, amending some claims and responding to the rejections. An Advisory action mailed January 30, 2003, indicated the amendments would be entered on appeal, but the rejections were maintained. A Notice of Appeal was filed March 18, 2003, and an Appeal Brief was filed May 19, 2003.

In view of the Appeal Brief the examiner reopened prosecution by mailing a non-Final Office action to applicant on August 7, 2003, rejecting claims 10-19 on new grounds, holding claims 20-26 as non-elected. Applicant replied on November 7, 2003, adding claim 27 to a device and responding to the rejections and providing an affidavit.

The examiner mailed a new Final Office action to applicant on January 20, 2004, maintaining the rejections of record on claims 10-19 and 27. Applicant replied by filing a Notice of Appeal on May 20, 2004, and an Appeal Brief on July 22, 2004, concurrently with this petition.

DISCUSSION

Applicant requests rejoinder of the method of making claims with the device claims. The examiner has indicated that the method claims, filed after start of prosecution, will be rejoined with the device claims upon allowance of the device claims, so long as they include all of the limitations of the allowed device claims. This was stated in the first Office action following presentation of the method claims. This is in accord with standard Office practice. As the device claims have not yet been found allowable rejoinder is not appropriate at this time.

DECISION

The petition is **DENIED**.

The application will be forwarded to the examiner for further consideration.

Any request for reconsideration of this decision must be filed within TWO MONTHS of the mailing date thereof and be addressed to the Director, TC 1600, at the address listed above.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number.



Bruce M. Kisliuk
Director, Technology Center 1600